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Before the
FEDERAL COMMUNICATIONS COMMISSION

778 F.2d 28, 34 (D.C. Cir. 1985). ORA and one other applicant in this proceeding propose such acceptable tower sites and no party has contested their availability and suitability.

The applications in this proceeding were filed for a channel which was allocated years ago. The allotment is now vacant because the license was deleted as a result of denial of the renewal application. ASF and the other short-spaced applicants are proposing the use of the existing tower of the previous licensee. That station was short-spaced to Station WTTF-FM, Tiffin, Ohio, but was "grandfathered" under Section 73.213. On September 11, 1992, Station WTTF-FM also filed an informal objection to ASF's attempt to perpetuate the short-spacing caused by the now deleted station.

ASF proposes the use of a directional antenna under Section 73.215 in order to utilize the existing tower of the previous licensee. In opposing ORA's petition, ASF has suggested that the directional antenna provisions of Section 73.215 can be used to perpetuate any "grandfathered" short-spacing which was caused by a deleted station. See, ASF oppositions, filed April 8, and August 10, 1992.

In John M. Salov, FCC 92-565, para. 17, released January 8, 1993, the Commission directly addressed this issue. Therein, it held that Section 73.213 applies only to existing short-spaced stations. When an allotment becomes vacant, Section 73.213 is no longer relevant or applicable. Moreover, the Commission, at para.

18, held that directional antennas, pursuant to section 73.215, could not be used to perpetuate "grandfathering" caused by a deleted station.

The Commission, at paras. 15-16, further held that it is established practice to remove vacant allotments which do not meet the minimum spacing requirements, whenever the opportunity arises. According to the Commission, short-spaced channels are inefficient and the public interest is best served by not allowing them.

However, the vacant Westerville allotment does not have to be deleted because fully-spaced and technically suitable tower sites exist and are available. The problem here is that ASF and other applicants insist on using an existing tower which is 6.84 km. short-spaced. These applicants insist that this use is permissible because the previous Westerville licensee, with which they have no privity, was "grandfathered" under Section 73.213. However, in view of John M. Salov, that rationalization has no merit and must be rejected.

The holding of John M. Salov is also consistent with other Commission precedent which is applicable to this proceeding. In MM Docket No. 87-121, 6 FCC Rcd 5356, 5360, para. 27 (1991), the Commission ruled that directional antenna applications would be granted under Section 73.215 only in those exceptional circumstances where no fully-spaced tower sites are available and only in cases of necessity. ASF, of course, cannot make such a showing.

WHEREFORE, in view of the foregoing, the application of ASF is impermissibly short-spaced and must accordingly be dismissed with prejudice.

Respectfully submitted,

MCNAIR LAW FIRM, P.A.

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the McNair Law Firm, P.A., do hereby certify that on this 25th day of January, 1993, I have caused to be hand-delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Supplement to Deny and Dismiss the Application of ASF Broadcasting Corp." to the following:

Dennis Williams, Chief*
FM Branch
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